IN THE HIGH COURT OF JUDICATURE AT MADRAS

(APPELLATE JURISDICTION)

WEDNESDAY, THE TWENTY SIXTH DAY OF SEPTEMBER

TWO THOUSAND AND SEVEN

PRESENT

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA
AND
THE HONOURABLE MRS.JUSTICE R.BANUMATHI

WRIT APPEAL NOS.2771 OF 2004 AND 2772 OF 2004
W.P.Nos.18300 to 18311 of 1998,18348 to 18351/98
18566/1998, 21300/2000, 21635, 21644 and 21654/2000;
7072/2002,8155/2002;
8190 of 2002 and 14868 of 2002

1.The Regional Director,
Southern Regional Business Centre,
Oil & Natural Gas Corporation ltd.,
Thalamuthu Natarajan Building,
CMDA Tower, 8, Gandhi Irwin Road,
Egmore, Chennai 600 008. I Petitioner in WA.2771/05, WA.2772/04

2.Post Retirement Benefit Scheme Trust
rep. By its Executive Officer,
Oil & Natural Gas Corporation ltd.,
PRBS Section, Tel Bhavan,
Dehradum 248 003. II Petitioner in WA.2771/04 WA.2772/04

J.N. Prabha Karuden ...Petitioner in WP.18300/98
Y.N. Durga Prasad ...Petitioner in WP.18301/98
Dr. N.V.L N.Prasad ...Petitioner in WP.18302/98
A. Sampath ...Petitioner in WP.18303/98
Chandrasekhar Devaluri ...Petitioner in WP.18304/98
C. Karuppian ...Petitioner in WP.18305/98
Dr.S.Ravindranath ...Petitioner in WP.18306/98
K. Rangasamy ...Petitioner in WP.18307/98
P. Prabhakar ...Petitioner in WP.18308/98
P. Soliappan ...Petitioner in WP.18309/98
J. Siva Sankar ...Petitioner in WP.18310/98
N. A. Naga Bhusanam ...Petitioner in WP.18311/98
O. Subramanyam ...Petitioner in WP.18348/98

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K. V. Gopala Krishna Roa ...Petitioner in WP.18349/98
Y. Ramakrishna Rao ...Petitioner in WP.18350/98
D. Rajeshwaran ...Petitioner in WP.18351/98
Y. Prakasah Babu ...Petitioner in WP.18566/98

1. Singh J. N.
2. Sankalpa Mitra
3. Singh R. C.
4. Sunil V.
5. R. Bhatnagar
6. I. Sarala
7. Ramakrishna K.
6. Prasad NBR
9. Suresh Kumar D.
10.Sekar N.
11.Mohan VVK
12. Vinayakumar
13. Kalyanasundaram N
14. Haridas A.V.
15. Yagna Narayana K.V.S ...Petitioners in WP.21300/00

1 G.GANGA
2 M.GOPALAKRISHNAN
3 S.RAMAMOORTHY
4 C.PRABAKARAN
5 O.CHIDAMBARAM
6 S.SATHYANARAYANAN
7 V.SUBRAMANIAM
8 S.NEELA
9 N.PRABHAKAR
10 B.K.DHRUW
11 M.GANESH
12 HOTZAL
13 N.VARADHARAJAN
14 R.YOGESH
15 C.J.J.HEMAVATHI
16 K.PREMALATHA
17 V.RAVIKANTH
18 SHIV NANDAN SINGH
19 J.RAJENDRA BABU
20 P.AKILA
21 REMA MADAN MOHAN
22 ALEYAMMA PAUL
23 G.KALPANA
24 R.BORTHAKUR
25 N.GOVINDARAJ
26 K.SARITA RANI
27 G.CHANDRASEKAR
28 R.NARAHARI

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29 VELAYUTHAM R
30 S.KARUNANITHI
31 A.R.SRIDHARAN
32 B.N.DUARAH
33 G.ASHIRWADAM
34 V.N.PREM PRAKASH
35 SUNDARA MARY
36 S.R.RADHA
37 MERCY V.O.
38 V.SUMATHI.
39 P.SELVARAJAN
40 C.RAJENDRAN
41 RAJVINDER SINGH
42 A.V.SREENIVASAN
43 V.SARASA
44 A.N.VASAVI
45 PADMINI K.KUMAR.
46 V.MAHALINGAM
47 KARAM SINGH MUNDA.
48 LALITHA GOPALAN
49 V.SHYAMALA
50 KUMARAN P.R.
51 SHANTHA PRIYA M.
52 EMAN GURIA
53 MOHAMED ALI BASHA A.
54 LANKA RAVI
55 P.KONGUVEL
56 S.CHITRAVEL
57 PETER J
58 K.NAVANEETAN
59 P.S.VASU
60 P.JOTHI
61 R.SAMPATH KRISHNAN
62 D.SUGUMAR
63 P.B.SHARMAH
64 S.SENTHILKUMAR
65 K.JAYALAKSHMI.
66 R.PANNERSELVAM
67 VIDEH KUMAR
68 NUNNA MAJHI

Petitioners in WP.21635/2000
Respondent No.3 to 7 in WA.2771/04

All the above Writ Petitioners are employees of Oil and Natural Gas Commission, CMDA Buildings, Thalamuthu Natarajan Buildings, Egmore, Chennai - 8.

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1. Iqbal M.K.
2. Garg. HN
3. Mohan Bhat B.
4. Kumar GVR
5. Sampath. A
5. Rao SM
7. Jagdish Singh
8. Kannoji A.K.
9. Ganesh P.
10. Vyas D
11. Prabhakar V.
12. Boopalan K.
13. Naga Seshu Kumar CH
14. Radhakrishnan S
15. Raju Dsan
16. Subramaniyam M
17. Ramaswamy V.
18. Krishna CMR
19. Narasimha Rao BVL
20. Pillai. MKG
21. Rao K.
22. Ramkripal
23. Krishnamurthy VP
24. Gautham Bebnath
25. Sita Ramaiah. D
26. Shankar T
27. Mohanthy S.N.
28. Ganesan G
29. Rao NS
30. Sanjeeva Reddy Gorrepathi
31. Jayaraman Ts
32. Murugesan M
33. Venugopal K
34. Raw SVH
35. Vasantha Mohan P.
36. Ram. BH
37. Baruah BB
38. Sivan S.T.
39. Rawat. Ms
40. Ravikumar R
41. Kandavel PBE
42. Kalyanasundaram S.
43. Philip James
44. Vidyasagar K.
45. Rajesh Sharma
46. Selvaraj C.
47. Chakravorty Chinmoy
48. Ashoke Kumar Roy

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49. Thajudeen. E.
50. Goud A. B.
51. Prakash G.
52. Kailash Prasad
53. Raman C.N
54. Subramaniam R
55. Venugopalaswamy T.
56. Bhujanga Rao T.
57. Markandeyalu C
58. Sharma A.K
59. Sadanandan Nair V
60. Rao C.M.

S.No. 61 permitted to withdraw dismissed as withdrawn as per order dated 11.07.03 in WP.21644/2000

62. Vasudevan.K
63. Sushi Nuwal
64. Raju Xavier
65. Rao SMK
66. Srinivas D
67. Chaudhuri A
68. Reddy DV
69. Ismail S.M
70. Murty MSN
71. Reddy PK
72 Narisimha P
73. Satya Sai CH. V
74. Surendra Mohan D
75. Arunava Sanyal
76. Bhaskaran S
77. Murthy VSR
78. Nagabhushanam K
79. Sharma A.K
80. Bhanumurthy C
81. Agarwal AK
82. Atul Jamkhindikar
83. Rao RV
84. Rao SLN
85. Subba Rao VV
86. Balai L.L
87. Venkataraman K
88. Deo PP
89. Seshasai N
90. Mishra RN
91. Raja R
92. Bobby J. Thattacher RY

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93. Silvester JM
94. Ramachandran K
95. Bhanumurthy N
96. Dhandapani K
97. Anthony D
98. Ramkumar
99. Ekambaram I
100. Kathurai CM
101. Vijayalakshmi KG
102. Prabhakaran S
103. Kunal Niyogi
104. Viswanth R
105. Rajender Kumar
106.Murthy.NCGS
107.Vishal Sastri
108.Saha. SK
109.Bhatnagar.P.K.
110.Uma Maheswar.D
111.Srinivasa Murthy.K
112.Subramania Iyer.R
113.Sastry Iyer
114.Murthy CSVR
115.Sarma MSN
116.Venkataramana.M
117.Tripathi.RP
118.Srinivasan.S
119.Selva Pandian.M
120.Ramesh Babu.B.
121.Nand Kishore.H
122.Ravikumar.C
123.Goutam Malatkar
124.Ashok Kumar Bansal

S.No.125 permitted to withdraw dismissed as withdrawn as per order dated 11.07.03 in WP.21644/2000

126.Ravi Kumar.T
127.Murthy BSN.
128.Reddy.V.P.
129.NAG.PK
130.Mala Janardhanan
131.Neeraja.P.
132.Rama Murugadass
133.Aravamudhan.J
134.Giri.J.P.N.
135.Hanwate.D.R.
136.J.Sarkar
137.DAS.S.K.

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138.Mohammad Nasir
139.Janardhanan.S.DR.
140.Rana.B.S.
141.Ramachandran.C.K.
142.Phani Shekar.N
143.Miranda.S.
144.Nilson.L.
145.Krishnan K.A.
146.Thigarajan.J
147.Nagarajan.S.
148.Kanthappan.K.
149.Ranganthan.S.
150.Nappoly C.J.
151.Pushpendrakumar
152.Dominic F.U.
153. Misra.S.N
154.Murthy Jvssn
155.Shankar.M
156.Chandra Shekar.D.V.
157.Prabhakar Rao.K.
158.Abbas Mehdi.S.
159.Iyer Sunder.R.
160.Srinivasulu.M
161.Suresjh.V.Heggade
162.A.Hassan
163.Mahapatra K.K.
164.Manoharan.P.
165.Ajay Kumar singh
166.Gunasekaran.R
167.Nigam.S.K.
168.Babu.M.
169.Venkatesh.K.S.
170.Rejendran.B
171.Waikar.R.R.
172.Perumal.A.P.
173.John.T.Koshy
174.Choudhary.B.
175.Abraham Jacob
176.Jagadamba Prasad
177.Bhaktavatsala.K.V.
178.Venkataraman.B
179.Chidambaram.L.
180.Nagaraj.M.
181.Yadagiri.K.
182.Nagaraja Rao.J.
183.Reddy.A.N.
184.Jaiprakash.B.C.
185.Poovendan.A
186.Prabhakar.P.d.

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187.Narasimha.K.
188.Radhanjaneyaswamy
189.Ghulam Moinuddin
190.Natarajan Babu.T.
191.Raghavendran.K.
192.Jothimony.K.
193.Sudip DE.
194.Paidya.T.K.
195.Seshavataram.P.S.
196.Purushottam.SV
197.Rao.A.S.
198.Dhayalan.S.
199.Muruganandam.S.
200.Joseph Amalrajan.G.
201.Yedindas.T.R.
202.Manivannan.P.
203.Sridharan.K.
204.Venkataraman.K.S.
205.RAO.M.P.
206.Murthy.RVS
207.Chandola.SK
208.Sounndara Rajan.P.
209.Gopakumar.K
210.Sunita Kulkarni
211.Muralikrishnan.B.
212.Ganesh.N.
213.Gupta.UC
214. Venkatesh.K
215. Baskaran .K.
216. Malleswari .MN
217. Usha Rani.R
218. Renugopal.S
219. Muthumanickam.G
220. Savithri.G
221. Natarajan.M
222. Jagannadham.B
223. A.K. Malhotra
224. JIT.Singh
225. Joseph J. Kadanthod.U
226. Rahasekaran .R.
227. Abraham C.E.
228. Mallika.B
229. Narasimhan S.A.
230. Chandra Sekar.G
231. Premakar C.S.
232. Narasimha Chari. M.V.
233. Reddy. Y.G.
234. Sreedharan Nair .AN
235. Subramanian K.S.

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236. Sampath.S.
237. Baskaran S.
238. Somnath .DE
239. Gupta .R
240. Mahendran.N
241. Abdul Ahad
242. Sukumaar.CK
243. Raghunath.R
244. Johny K.M.
245. Sankaran.R
246. Pushpa Rajagopalan
247. Manikandan.M
248. Moses.G
249. Naganandini.KVL
250. Sivanesan.C
251. Venkatasubramania N.R.
252. Chandra Mohan .T
253. Chitra.R
254. Sista Uday Bhaskar
255. Shanmugasamy.S
256. Kapil Dev Singh
257. Vijayakumar.J
258. Harpal Singh
259. Pradeep KR Ghaturay
260. Sarat Babu.P
261. Baxla.B
262. Jayasekaran.A
263. Dwivedi M.M.
264. Senthil Kumar TK
265. Rao K.P.
266. Srinivas P.S.
267. Ramanan.S
268. Hare Ram.P.
269. Rao. G.V
270. Christopher.J
271. Nagarajan.A
272. Balakrishnan.V
273. Subramaniam.T
274. Anbuchelvan.P.
275. Rudra Pal Singh
276. Somasundaram.A.
277. Ishrath Jehan
278. Muruganandan.M
279. Vasudevan.R.
280. Anirudh Rao.M.
281. Kalyana Sundaram.N
282. Pemmaiah K.C
283. Chandrasekar.S.

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285. Sanjeeb Swain
286. Krishnamurthy RN
287. Onkar Prasad LM
288. Virendra Kumar
289. Ramesh K.V.
290. Arun
291. Subramanian.J
292. Nautiyal YC
293. Negi K.S.
294. Rakesh Kumar
295. Jose Zachariaz
296. Srinivasan.S
297. Abhayabh Vardhan
298. Ranganathan K.P.
299. Murugan.A
300. Giribabu.J
301. Chowdary S.H
302. Murugesan.K
303. Savithri Sriram
304. Prema .R
305. Balaji.A
306. Chandran.K
307. Deepak Bhatia
308. Gunaseelan.C
309. Nallapan.G
310. Shiv Shankar.V
311. Swamy MRN
312. Subramanian.S
313. Gangadharan Nair.M.
314. Rengasamy.R
315. Chelladurai.K
316. Velu.K.
317. Rajamuthu.A
318. Nageswara Rao. S.B
319. Murugan Pugazhanthi.S
320. Girija .G
321. Vijaya Kumari.K
322. Jeyalakshmi.A
323. Zyboon
324. Kugan.S.
325. Natarajan.P.
326. Loganathan.G.
327. Veeramani.R.
328. Rajappan.P.
329. Ramamurthy. GB.
330. Muthaiyan.S.
331. Rameshray Yadav
332. Muralikrishan.A

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333. Mahamed Ali.A
334. Manickavasagam.N.
335. Murugan.A.
336. Om Prakash Kukreti
337. Ravi.G.K.
338. Ravi.U.
339. Kamalakkannan.M. Petitioners in WP.21644/2000

All the above Writ Petitioners are employees of Oil and Natural Gas Commission, CMDA Buildings, Thalamuthu Natarajan Buildings, Egmore, Chennai - 8.

1. Rao Y.S.S.
2. Mohamed Hameed.
3. Chandrasekaran.C.R. Petitioners in WP.21654/00. Respondent No.3 to 5 in WA.2772/04

1. A.Authimoolam
2. M.Polaiah
3. T.Lakshmi Priya
4. M.K.Bhuvaneswari
5. P.Leena Susan
6. K.Bhaskar
7. A.Thangaraju
8. K.R.Muralikrishnan
9. C.H.Prabhakar
10. S.Jayabalan
11. K.Balu
12. D.Vital
13. G.Sekar
14. C.Thampan Petitioners in WP.7072/02

1. K.R.Ajit Kumar
2. V.Narasimha
3. Dr.K.Ramamurthy Petitioners in WP.8155/02

1. Shyamal Kumar D.S.
2. K.Giridhar Rao
3. D.R.Kadali
4. U.Madasamy
5. A.K.Chakraborty
6. Sanjoy Sinha
7. M.Akilan
8. K.S.Rana
9. V.R.Moorthy
10. G.C.Saha

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11. C.M.Varadarajan
12. R.S.Bhola
13. E.Chandran.
14. S.Ramesh Babu
15. B.K.Choudhary
16. K.S.R.J.Rao
17. V.S.Reddy
18. M.Sivaraju
19. V.Subramaniayam
20. A.Y.Sudheer Kumar
21. R.Raja Raghu
22. P.K.Jain
23. O.N.Syani
24. B.Baskaran
25. B.L.Garya
26. S.Kalaimani
27. M.Sundar
28. R.Mahadevan
29. Somnath Doss
30. G.A.Badrinarayana
31. S.Kannan
32. S.Anantha Padmanabha Raju
33. P.Muralidharan
34. D.Devadoss
35. Manas Kumar Basu
36. A.Veeramani
37. J.Ravichandran
38. P.R.Kumar
39. R.K.Frederick.
40. G.Ramesh
41. K.Sampath
42. O.P.Gupta
43. R.Rajasekaran
44. K.K.Desai
45. H.N.Arora
46. P.Rajasekaran
47. S.Vasantha Kumar
48. N.Rajendren
49. J.Sanakra Lingam
50. A.Panneerselvam
51. Ravi.K.Nigam
52. S.Balaji
53. K.Anandan
54. Sudeep Abraham Mathew.K.
55. Sanjay Sharma
56. T.Sithivinayagam
57. K.A.Murugavel
58. V.Vairavasamy
59. K.Raghuraman

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60. M.S.Vijaya Chandran
61. Debasis Karajai
62. M.K.Doss
63. K.Ajith Kumar
64. G.Ramesh
65. Kishore Lal
66. D.N.R.Kumar
67. K.S.Girish
68. L.K.Balu
69. R.Sengottaiyan
70. S.Babu
71. N.Ashok Kumar
72. P.Viswanathan
73. S.Srinivasan
74. G.U.Prasad
75. B.K.Trisal
76. Robin Mathai
77. A.Mathi
78. N.Padmakumar
79. Mukul C.Das
80. K.R.Nambiar
81. B.Rajan Babu
82. P.Rajendran
83. S.Venkata Ramaiah
84. K.Vijay Gopal
85. A.Arunachalam
86. A.Dhakshinamoorthy
87. V.Rajasekaran
88. V.Sundararajan
89. G.Munusamy
90. A.Sengupta
91. Raghuraj Singh
92. A.Arputham
93. B.N.V.Prasad
94. Sayan Biswas
95. A.C.Naithani
96. I. Gopinath
97. B.Vinod Babu
98. A.Ponnusamy
99. M.Selvakumar
100. A.Krishnamoorthy
101. V.Rajakumar
102. P.N.Maran
103. S.B.Srivastava
104. P.J.A.Selvam
105.V.Kumaresan
106.G.Alexender
107. N.P.Sridhar
108. P.Rajagopal

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109. K.Vaira Pragasam
110. S.Selva
111. S.Sundaramoorthy
112. K.Bhaskar
113. B.S.Sharma .. Petitioners in WP.8190/02

1 R.SAMRAJ
2 K.MOORTHI
3 AMAK MARICAR
4 T.S. PALANI
5.M.VISWANATHAN NAMBIAR
6 VINOD KULASARI
7 RAJGOPAL PRASAD
8 DULAL DEBNATH
9 C.S.KURUP
10 K.VISWANTHAN
11 P.RAMESH
12 M.MD.NAJEEB
13 T.K.BHAGAD
14 S.PACKIRASAMY
15 K.K.BALAKRISHNAN
16 ATUL BOSALE
17 D.RAMANUJAM
18 J.KANTHARAJ
19 T.ARTHUR BERNAD
20 M.GOWRI SANKAR
21 S.SUBRAMANIAN
22 S.MUTHU PANDIAN
23 T.MURUGESAN
24 E.K.TONNY
25 JOY PAUL .C
26 THOMAS K.J.
27 K.RAGHU Petitioners in WP.No.14868/02.

vs

Union of India,
represented by the Secretary,
Ministry of Petroleum and natural Gas,
New Delhi. First Respondent in
WA.2771 and 2772 of 2004
First Respondents in
WP.18300/98 to 18311/98,
WP.18348/98, 18349/98,
18350/98, 18351/98, 18566/98,
21300/2000, 21654/00,
7072/02, 8155/02, 14868/02,
21644/00, 21635/00, 8190/02.

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The Chairman-Cum-Managing Director,
Oil and Natural Gas Corporation Ltd.,
Jeevan Bharathi, Tower II,
124,Connanght Circus, New Delli-110 001.

Second Respondent in WA.2771 and 2772 of 2004
Second Respondents in WP.18300/98 to WP.18311/98, WP.18348/98, 18349/98, 18350/98, 18351/98, 18566/98, 21300/2000, 21654/00, 7072/02, 8155/02, 14868/02, 21644/00, 21635/00, 8190/02.

The Regional Director,
Southern Regional Business Centre,
Oil and Natural Gas Corporation limited,
Thamamuthu Natarajan Building(CMDA TOWER)
8,Gandhi Irwin Road,
Egmore, Chennai-600 008.

Third respondent WP.18300/98 to WP18311/98, WP.21654/00, 7072/02, 8155/02, 14868/02, 21644/00, 21635/00, 8190/02, WP.18348 to 18351/98, WP.18566/98, 21300/00.

The Secretary Ministry of Labour
Govt of India, New Delhi.

First respondent in WP.21300/2000 21654/00, 7072/02, 8155/02, 14868/02, 21644/00, 21635/00, 8190/02.

The Executive officer,
Post Retirement Benefit Scheme Trust,
Oil and Natural Gas Corporation Ltd.,
PRBS Section, Tel Bhavan,
Dehradum-248 003.

The Fourth respondent in WP.18300/98 to WP.18311/98, WP.18348/98, 18349/98, 18350/98, 18351/98, 18566/98, 21300/2000, 21654/00, 7072/02, 8155/02, 14868/02, 21644/00, 21635/00, 8190/02.

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Appeal under clause 15 of the letters patent against the order of the Honourable Mr.Justice K.Raviraja Pandian dated 11.9.2003 and made in the exercise of the ordinary special original jurisdiction of High Court in Writ MP.31416 & 31435 of 2004 in Writ petition Nos.21635 and 21654 of 2000 petitions praying that in the circumstances stated therein and in the respective affidavits filed therewith the High Court will be pleased to grant ad-interim injunction restraining the 2nd & 3rd respondent from or

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any deriving right under the second and third respondents from deducting any amount towards UNGC self contributory post retirement and death in Service Benefit Scheme in permit to circular bearing No.40 dated 18.06.1998 any manner herein after and second to grant ad-interim injunction restraining the 2nd & 3rd respondent from deducting any amount from the salary towards UNGU staff contributing post retirement and in service Benefit scheme and in pursuant to the circular dated 18.6.98 bearing No.PRBS/40 by the 4th respondent herein after respectively pending disposal of the above WPs.21635 and 21654 of 2000 respectively.

Petitions under Article 226 of the Constitution of India praying that in the circumstances stated therein, and in the affidavit filed therewith the High Court will be pleased to issue writ of Mandamus, Writ Petitions filed for Writ of Mandamus directing the ONGC, the second respondent to forbear from deducting any amount towards the ONGC Self-Contributory Post Retirement and Death in Service Benefit Scheme from 16.11.1995 from the petitioner's salary pursuant to circular 40 dated 18.06.1998 of the fourth respondent. (WP.18300 to 18311/98, WP.18348 to 18351/98, 18566/98)

directing the respondents 2 to 4 to compute from the date of deduction and refunds the amounts contributed towards Oil and Natural Gas Corporation Self contributory post retirement and health in service benefit scheme known as PRBS Constituted on 29.4.1990 in U.O.No. GGM (P) SBC/OFF/I with interest (WP.21300 of 2000) (WP 8190 of 2002) (WP.21635 of 2000) WP.21644 of 2000 (WP.21654 of 2000) (WP.14868 of 2002) (WP.8155 OF 2002) (WP.7072 of 2002)

ORDER : These Writ Appeals & WPs coming on for hearing on Thursday the sixth day of September, 2007, upon perusing the Grounds of Appeal, the Order of the Honourable Mr.Justice K.Raviraja Pandian dated 11.9.2003 and made in the exercise of the Special Original Jurisdiction of the High court, in Writ MP.31416 & 31435/2000 in Writ Petition Nos.21635 & 21654 of 2000 and all other papers material to this case, and upon hearing the arguments of Mr.G.Masilamani Senior Counsel for Mr.P.Rathinadurai, Advocate for appellants and of Mr.P.Wilson Assistant Solicitor General for first respondent in both WAs. and of Mr.A.Elango Advocate for the second respondent in both WAs and of Mr.H.Nazirudeen Advocate,for the respondents 3 to 70 in WA.2771/04 and for Respondents 3 to 5 in WA.2772/04 and upon hearing the arguments of Mr.A.S.Chandrasekaran Advocate for the petitioner in W.P.No.18300 of 18311, 18348 to 18351 and 18566 of 1998 and of Mr.H.Naziruddan Advocate for the petitioner in W.P.No.21300,21635,21644 and 21654 of 2000 and of Mr.P.Wilson Assistant Solicitor General for first respondent in all Writ Petitiones and of Mr.G.Masilamani Senior Counsel for Mr.P.Rathinadurai Advocate for the respondents 2 to 4 in W.P.No.18300 to 18311, 18348 to 18351 and 18566 of 1998, 21300, 21635, 21644 and 21654 of 2000 as of Mr.A.Elango Advocate for the respondent 2 to 4 in W.P.No.7072, 8190, 8155 and 14868 of 2002 and of Mr.V.Vibhishanan, Advocate for the fifth respondents in W.P.No.21300,21635,21644,21654 of

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2000 and W.P.No.14868 of 2002 and having stood over for constitution till this day the court made the following order;

COMMON JUDGMENT

R.BANUMATHI, J.

The Writ Petitioners seek issuance of a Writ of Mandamus to direct the ONGC to forbear from deducting any amount pursuant to its circular No.40 dated 18.06.1998, towards Post Retirement and Death in service Benefit Scheme [for short, 'PRBS'], from 16.11.1995 from the salary of the petitioners.

2.Background facts:-

The controversy in these Writ Petitions and Writ Appeals relate to PRBS, which is managed and controlled by a Trust as per the Trust Deed dated 23.10.1991. Petitioners are Members of Association of Scientific and Technical Officers [ASTO]. In order to keep healthy relationship with employees and for their welfare, after various discussion, ONGC evolved PRBS w.e.f. 01.04.1990 as a welfare scheme. The scheme provides for benefits to the employee or their dependants in the event of permanent total disablement or death, over and above the amount payable under the Workmen's Compensation Act.

3.The draft scheme was approved by the Government of India on 18.09.1991 and by the Income Tax Department on 05.02.1991. The scheme is to take care of the post retirement needs of employees of ONGC and provide social security to the dependents of the deceased employees. As per the then scheme in 1990, scheme would be optional to the then serving officers and compulsory for those officers who joined the services of ONGC on 01.04.1990 and thereafter.

4.W.P.No.1718/1996 of Bombay High Court and modified scheme Circular No.PRBS/40 :-

One A.K.Sundaram and 184 others have filed W.P.No.1718/1996 on the file of High Court, Bombay, challenging the financial viability of PRBS and praying not to implement PRBS. By an order dated 05.11.1996, High Court of Bombay observed that the scheme was not viable unless additional funds are raised from different sources. The representatives of ASTO and ONGC agreed for healthy negotiations to improve the scheme. M/s.K.A.Pandit, Actuary was appointed to review PRBS. After due deliberations and considering the report of the actuary, a Memorandum of Understanding [MOU] was executed between the Central Working Committee of the ASTO and authorised representatives of the Writ Petitioners with ONGC. M/s.K.A.Pandit, Actuary had also certified that PRBS had become viable again. Recording the MOU dated 03.02.1998, the High Court of Bombay had granted leave to the Writ Petitioners to withdraw the Writ Petition.

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5.Claim for exemption under EPS 1995 and Writ Petitions before Supreme Court :-

Employees Pension scheme came into effect from 16.11.1995. ONGC applied for grant of exemption under para 39 of EPS 1995. Ministry of Labour, Government of India refused to grant exemption under para 39 of EPS 1995. Challenging the order refusing to grant exemption, ONGC filed W.P.No.499/1999 before the Supreme Court of India. ASTO also filed Writ Petition in W.P.No.612/997 seeking implementation of PRBS. By the Judgment dated 11.11.2003, the Hon'ble Supreme Court allowed W.P.No.490/1999 filed by ONGC and batch of other Writ Petitions, directing the concerned authority to examine the application for exemption under EPS 1995 in the light of observations made by the Supreme Court.

6.On the basis of the order passed by the Supreme Court, ONGC renewed the application for exemption on 16.01.2004. Again the Ministry of Labour, Government of India rejected the application of ONGC for exemption under EPS 1995. Since the Government has rejected the application for exemption under EPS 1995, ONGC implemented EPS 1995 w.e.f. 16.11.1995.

7.Modified PRBS and continuation of PRBS as Defined Pension Scheme and as additional welfare scheme :-

A joint committee, consisting of four representatives of the Management, five representatives of ASTO and three representatives of recognized Unions were formed to decide on the references inter-alia to study PRBS and consider the recommendations of M/s.Mercer, Actuary. M/s.Mercer Actuary, Human Resources Consulting was appointed to recommend necessary changes for long term viability of the scheme. On 01.03.2007, Central Working Committee of ASTO passed a resolution stating that the modified PRBS is substantial and compulsory, as Defined Pension Model, and that it has decided to continue with the scheme as additional welfare scheme and that the scheme is compulsory for all the existing members w.e.f. 16.11.1995. In the meeting between management of ONGC and Central Working Committee of ASTO, on 01.03.2007, about 23 issues, including Item no.8, relating to review of PRBS and 5 additional issues, were considered.

8.Based on the discussions, Trustees of PRBS Trust passed unanimous resolution for amendment of PRBS, subject to the approval of Income Tax Department, more particularly in respect of of enhancement of contribution varying between 2% to 11% of the notional salary w.e.f. 01.04.2007. The MOU was executed between ONGC and ASTO in respect of modified PRBS making it as "Defined Pension Scheme", which is compulsory to all employees w.e.f. 16.11.1995. To mitigate the deficiency, Board of Directors of ONGC resolved to pay huge amounts out of the distributable profits. Pursuant to the resolution, management of ONGC transferred Rs.320 crores to ONGC PRBS Trust to mitigate the deficiency in PRBS. PRBS Trust is said to have so far settled 17,107 claims of its members a sum of Rs.128.16 crores.

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9.In W.P.No.21635 and 21654/2000, interim injunction was granted in W.P.M.P.Nos.31416 and 31435/2000 restraining ONGC from deducting any amount from the salary for contribution towards PRBS. Aggrieved by interim injunction, ONGC has preferred W.A.No.2771 and 2772/2004. Since common points are involved, the Writ Appeals and the batch of Writ Petitions were heard together and all the connected matters shall stand disposed of by this common Judgment.

10.In these Writ Petitions, there are two batches. In one batch, petitioners seek issuance of Writ of Mandamus forbearing ONGC from deducting any amount from petitioners' salary towards PRBS w.e.f. 16.11.1995. Another batch of Writ Petition relates to repayment of the contribution collected towards PRBS. In all cases, financial viability of PRBS and its validity in the light of EPS 1995 and its justness and fairness is challenged.

11.Pleadings and contentions of parties :-

Objecting to the PRBS scheme as per circular PRBS/40 and seeking Writ of Mandamus forbearing ONGC from deducting salary, various Writ Petitions have come to be filed. According to the Writ Petitioners they have not opted for PRBS scheme but they are compelled to opt for the scheme under the Private Trust. According to the petitioners, the EPS 1995, which came to into force on 16.11.1995 is a Statutory Scheme and the Writ Petitioners shall automatically be members of EPS 1995 w.e.f. 16.11.1995 onwards. The impugned Circular of PRBS/40 making the membership to PRBS as compulsory w.e.f. 16.11.1995 is arbitrary, illegal and violative of principles of natural justice.

12.After enumerating the comparative benefits under both schemes, Writ Petitioners have further alleged that pensionary benefits of PRBS is far less to that of Employees Pension Fund, 1995 of the Central Government. Contribution made by ONGC towards the scheme is only a token amount of Rs.100/- per annum, and further no financial liability on account of the scheme will devolve on ONGC or the Government. PRBS is not a viable scheme. Since the petitioners herein have opted for EPS 1995, there is no necessity to continue in PRBS, which is a voluntary scheme constituted under the Trust Deed, for which no legal sanction was accorded by Central Government nor was there any contribution on the part of the ONGC.

13.ONGC has resisted all the Petitions by filing elaborate counter affidavit, listing out various benefits and making out a case that PRBS is financially viable. According to ONGC, the scheme was implemented after various discussions with ASTO and PRBS is a composite social security scheme for the benefit of the employees.

14.We have heard in-extenso Mr.Naziruddin and Mr.Chandrasekaran appearing for writ petitioners. The learned Counsel for the Writ Petitioners contended that when plea of exemption was rejected by the

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Central Government, the entire contribution to PRBS is to be extended to the statutory scheme and continuation of a parallel scheme would amount to duplication of the statutory scheme. It was further submitted that contribution of ONGC being very minimal, the financial viability of PRBS is in doldrums, and in exercise of jurisdiction under Article 226 of the Constitution of India, the High Court has to restrain ONGC from making further deductions. Counsel appearing for the Writ Petitioners also urged that when EPS 1995 is more beneficial, for continuation of PRBS, it is to be shown before the authorities that PRBS is no less favourable than that of EPS 1995 for continuation of PRBS. Circular No.40 dated 18.06.1998 of PRBS has no legal sanctity and the same is not binding on the petitioners. Petitioners allege that deduction of amounts for contribution towards PRBS is capricious, arbitrary and violative of Principles of Natural Justice. Grievance of petitioners is that their conditions of service cannot be changed to the detriment of interest of the employees without getting their consent in writing and the same is derogative of Principles of Natural Justice.

15.Countering the arguments, Mr.Masilamani, learned Senior Counsel for ONGC has submitted that when Circular no.40, is not the subject matter of challenge, Writ Petitioners cannot seek for consequential reliefs. Taking us through minutes of various meetings and the scheme, the learned Senior Counsel urged that when ASTO has collectively bargained for this scheme, and ASTO has also passed resolution for continuation of PRBS, a section of Executives cannot recile from the same. Drawing our attention to report of Actuary M/s.Mercer Human Resources Consulting, the learned Senior Counsel submitted that pursuant to MOU, already ONGC has made available huge amount from out of distributable profit and the financial viability of ONGC cannot be urged. It was further submitted that in any event whether viable or not, administration of the trust being disputed fact, the same cannot be gone into in exercise of jurisdiction under Article 226 of the Constitution of India.

16.We have also heard Mr.Vibishanan, learned Counsel for the Provident Fund Scheme. We have carefully perused the documents and paper book filed by the parties.

17.PRBS Compusory – whether arbitrary and violative of Principles of Natural Justice :-

PRBS is a self-contributory scheme in respect of post retirement and death-in-service benefit, which came into existence w.e.f. 01.04.1990. As per Cl.4 of the scheme, as on 01.04.1990, scheme is optional for existing executives as on 01.04.1990 and compulsory for Executives, joining regular service in Corporation as new entrants on or after 01.04.1990. According to the petitioners, they joined ONGC prior to 01.04.1990 and gave negative option to PRBS and based on their negative option, from time to time no amount was deducted from their salary towards PRBS by ONGC up to July 1998. Case of petitioners is that after the impugned Circular PRBS/40 dated 18.06.1998, PRBS was made compulsory for all the executives w.e.f. 16.11.1995. Clause 1 of the said circular reads as follows:-

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"Membership [of Para 1 – (c) of the Scheme] :-

The scheme shall be compulsory for all the executives w.e.f. 16.11.95 i.e. the date from which the Employees Pension Scheme, 1995 has been notified by the Government of India to facilitate grant of exemption to ONGC from the said EPS-1995, IF OTHERWISE ELIGIBLE TO BECOME THE MEMBER OF PRBS.

18.According to the petitioners, they are not parties to MOU and pursuant to MOU entered into with some officers and management, PRBS cannot be made compulsory and all the Scientific and Technical Officers cannot be compulsorily brought under the scheme. The learned Counsel appearing for the petitioners has submitted that Circular 40 dated 18.06.1998 making the scheme compulsory with retrospective effect from 16.11.1995 is not binding and deductions made from salary of the petitioners towards contributions under PRBS is arbitrary and in violation of the Principles of Natural Justice. Main objection raised is the viability of the scheme and that the scheme cannot be implemented. Strangely, circular PRBS/40 has not been challenged. But the petitioners have prayed for consequential relief, seeking direction, forbearing ONGC from deducting salary and for a direction to refund the amount already collected.

19.In August 1998, ONGC applied for grant of exemption under para 39 of EPS 1995. To facilitate grant of exemption, after discussion with ASTO, amendments/modifications were effected in the then existing PRBS. The scheme was made compulsory for all executives w.e.f. 16.11.1995, to facilitate grant of exemption to ONGC from the EPS 1995.

20.Since all the petitioners are members of ASTO, the contention of the petitioners that deduction from their salary is in violation of Principles of Natural Justice is unsustainable. Equally, the contention that the petitioners have not signed MOU and the terms of MOU are not binding upon them is untenable. As per circular PRBS/40 dated 18.06.1998 – amendments/modifications were effected in the existing scheme only after negotiations were held amongst concerned parties and in consultation with the actuary – M/s.K.A.Pandit. Now presently, as per MOU dated 09.04.2007, PRBS has been extended as 'Defined Pension Scheme'. After various discussions, as per the MOU executed between ONGC and ASTO in respect of PRBS, making it as "Defined Pension Scheme" has been agreed to be continued as additional welfare scheme along with EPS 1995.

21.If the settlement had been arrived at by a vast majority of the concerned executive with their eyes open and was also accepted by ASTO in its totality, it must be presumed to be just and fair and not liable to be ignored merely because a small number of executives have refused to accept it. It is well settled that the extra ordinary jurisdiction of the writ Court or judicial review should not be exercised unless it is shown that substantial injustice has been caused. We are of the view that MOU arrived

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at between ONGC and ASTO after elaborate discussion and in consultation with actuary ought not to be interfered with so easily, though it may not be to the liking of a section of executives.

22.ASTO has entered into a MOU with the management deriving retiral cum other benefits, details of which we would shortly refer to while examining the contentions of "justness and fairness" of the scheme. When ASTO has entered into MOU with the Management, presumption is that it has acted in the best interest of its members. The said presumption is not assailable in the absence of any oblique motive behind it. It may be noticed that the petitioners have not alleged any motive against ASTO nor seem to have raised their objections with ASTO. In fact, ASTO is not even made a party in these Writ Petitions. On the other hand, petitioners seem to have been enjoying the other benefits for which ASTO has negotiated, as we have detailed infra.

23.In arriving at MOU, no statutory violations is also alleged. In AIR 2004 SC 2135 [UCO Bank v. Sanwrnal with Oriental Bank of Commerce], MOU arrived at between employees of the Bank and the establishment was upheld by the Supreme Court. When MOU arrived at is just and fair, few executives cannot seek to wriggle out of it on the plea that it does not suit them. In our view, MOU Circular PRBS/40 dated 18.06.1998 as well as MOU dated 09.04.2007 making PRBS compulsory, cannot be held to be arbitrary at the instance of few disgruntled members.

24.Deductions are to be made from the salary of the petitioners for contributions towards PRBS. The monthly contribution rate of members has been increased periodically. It was submitted that right to salary is a fundamental right of the employees and any deduction from salary would prejudicially affect the right of the employees. Onbehalf of the petitioners, it was contended that any deduction of salary would amount to deprivation of their salary and as such, would affect their conditions of service. We are not impressed with this submission. In our considered view, the conditions of service is preceded by contract of service. Any variation in the conditions of service is only as a result of the settlement between the Management and ASTO. Writ Petitioners being members of ASTO cannot challenge deduction of salary for contribution towards PRBS.

25.Section 7(1) of the Payment of Wages Act contains clear mandate that the wages of a employed person shall be paid to him without deduction of any kind, except those authorised by, or, under the Act. Sub-section 2 of Sec.7 lays down as to what are the authorised deductions. List of deductions given in Sec.7(2) is exhaustive. As per Sec.7(kk), contribution towards any fund constituted by the employer for the welfare of the employed persons, or members of their families or both, and approved by the State Government, or any Officer specified by it in this behalf, is permissible deduction. The scheme has been constituted by ONGC for the benefit of employed persons and their families. Under PRBS, fund is entrusted to the Trust and is administered by Board of Trustees. At the time when the scheme was introduced, it was approved by the Central

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Government on 18.09.1991. We are of the view that deduction for contribution towards PRBS could only be an authorized deduction.

26.In fact, it is seen from the records, that increased contribution is made by increasing all allowances like cost of uniform; including stitching charges, expenditure on washing, expenditure on refreshment, availing of canteen facility. As per authorization letter of an individual employee, difference of cost of uniform, stitching charges, washing allowance, canteen subsidy and actual cost of facilities availed is remitted to PRBS.

27.The learned Senior Counsel Mr.Masilamani has drawn our attention to authorization letters given by some of the petitioners, authorizing Head F & A, PC Section, ONGC to remit the differential amount into the account of additional contribution of PRBS. We may usefully refer to one such letter for uniform reimbursement for PRBS deduction, which reads as under :-

> "It is to certify that I have incurred expenditure not less than Rs.19,300/- (Rupees nineteen thousand three hundred only) during the year 2005-2006 on account of cost of uniform including stitching charges, expenditure on washing thereof and expenditure on refreshment/availing of canteen facility.
>
> It is requested that the above mentioned amount may kindly be reimbursed to me. I certify that I am a member of the Post Retirement and Death-in-Service Benefit Scheme w.e.f. *~~1.4.90/16.11.95~~/ ..... (date of becoming member of PRBS*).

Authorization letter reads as under :-

> AUTHORITY LETTER
>
> I hereby authorize Head F&A, PC Section, ONGC, Chennai to remit to Executive Officer of Post Retirement Benefit Scheme (PRBS) an amount of Rs.19,300/-(Rupees nineteen thousand three hundred only) (i.e.difference between the cost of uniform, stitching charges, washing allowance, canteen subsidy and actual cost of facilities availed) on account of additional contribution of ONGC Self-Contributory Post Retirement and Death-in-Service Superannuation Benefit Scheme for the period from April 2005 to March 2006 @ Rs.1608.33 p.m. on my behalf."

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We are of the view that the grievances of the petitioners as to deduction in salary is untenable.

28.In fact, some of the employees have filed Civil Suit O.S.No.133/ 1998 on the file of Principal Senior Civil Judge, Rajahmundry, State of Andhra Pradesh for grant of Permanent Injunction restraining ONGC from deducting any portion of money from the salary of the plaintiffs and similar executives as contribution for PRBS. After full trial, the said suit was dismissed holding, "the plaintiffs are not justified in seeking

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injunction against the Defendants from effecting deductions as per the circulars of PRBS, mutually agreed upon, till such scheme is scrapped by the competent authority".

29.re contention regarding viability of the scheme :-

Financial viability of PRBS is the main ground of challenge. Contending that the scheme is not financially viable, the learned Counsel for the petitioners placed reliance upon the Judgment of Bombay High Court in W.P.No.1718/1996. In our view, this contention overlooks the fact that PRBS has gone several modifications/amendments.

30.According to the petitioners, as per the then existing scheme, no contribution will be made by ONGC towards PRBS except a token contribution of Rs.100/- p.a. The learned Counsel Mr.Chandrasekaran has drawn our attention to office order dated 06.08.1998 in which it is mentioned as follows :-

> "The PRBS scheme is based on Voluntary Contribution by the member Employees. No contribution will be made by ONGC towards this scheme except a token contribution of Rs.100/- (Rupees One Hundred only) per annum. No other financial liability on account of this scheme will devolve on ONGC or Government of India".

31.As we noticed earlier, one A.K.Sundaram and 184 others have challenged the financial viability of PRBS before the Bombay High Court in W.P.No.1718/1996. Bombay High Court vide its order dated 05.11.1996 observed as under :-

> "It is clear that the Scheme is not viable unless additional funds are raised from different sources otherwise the Scheme is liable to be scrapped altogether. The question relating to generation of additional funds will have to be considered by negotiations between the Officers Association and the Corporation. The Bombay Association has appeared through the President, ASTO [MRBC], ONGC and has agreed for holding negotiations with the Corporation".

32.After the Bombay High Court made the above observations in 1996, the scheme had gone a long way making the scheme financially viable. In compliance with the directions of the Bombay High Court, extensive discussions/negotiations were carried out on various dates between representatives of ASTO (CWC) and ONGC to review the scheme. In consultation with Actuary K.A.Pandit of Bombay, amicable understanding and settlement was arrived at and the MOU was signed on 03.02.1998, agreeing to modify the scheme. Finally the matter was heard by Bombay High Court on 29.04.1998. On being satisfied, Bombay High Court has permitted the petitioners to withdraw the Writ Petition on the basis of MOU. Based on the MOU dated 3.2.1998, Circular No.PRBS/40 was issued on 18.06.1998. Needless for us to elaborate the details of contribution and benefits already recorded to the satisfaction of Bombay High Court.

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33.After Central Government refused to grant exemption under Para 39 of EPS 1995, in 2005, Joint Committee consisting of representatives of ASTO and management was formed to decide on the references inter-alia to study PRBS. The representatives of ASTO including one of the petitioner Vasudevan also participated and Office bearers of ASTO all over the country participated in the discussions. M/s.Mercer, Human Resource Consulting was appointed to study the financial strength of PRBS and to recommend necessary changes for long term viability of the scheme.

34.M/s.Mercer in its report observed that the fund is unable to sustain itself mainly due to increase in the purchase price of annuity and falling interest rates and observed that there is much deficit in fund which needs to be met. However, M/s.Mercer recommended that PRBS can sustain as a Defined Pension Scheme at the present LIC rates and discounting rate of 8% per annum with an increase in contribution, from members and/or direct contribution by ONGC. The issue was deliberated and discussed in various meetings with ASTO and the recognized union of ONGC wherein it was opined that :

> "(i)PRBS may be implemented in terms of earlier MOUs dated 03.02.1998 and 19.07.1998 as defined pension scheme without any modification.
>
> (ii)All employees will agree for increased contribution & ONGC will also make its best endeavour to contribute to PRBS scheme."

35.Terms of Agreement/MOU was also entered into between Management on 09.04.2007 between ONGC and ASTO. As per the terms of the Agreement, ONGC shall deposit the amount from the distributable profit of the past as well as future. ONGC Board passed the following resolution as to the contribution of amount by ONGC :-

> "RESOLVED THAT subject to approval of change of contribution by ONGC to PRBS being granted by the Commissioner Income Tax, Dehradun, approval of the Board, be and is hereby, accorded for mitigation of the deficit in PRBS by making direct contribution of Rs.320 crore (for the financial year 2006-07) out of the distributable profits of last three years, Rs.250 crore (Rs.80 crore out of the distributable profits of last three years and Rs.170 crore out of the distributable profits of 2007-08) in the financial year 2007-08 and Rs.170 crore each for next three years out of distributable profits of the relevant years".

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36.The learned Senior Counsel Mr.Masilamani has also drawn our attention to the materials showing that ONGC has contributed an amount of Rs.170 crores + Rs.150 crores to ONGC PRBS Trust. We were also informed that PRBS Trust is said to have so far settled 17,107 claims of its members and paid as on 31.07.2007, a sum of Rs.128.16 crores. Apprehension of the petitioners as to financial viability of the scheme is totally unfounded. Even when the scheme was under challenge before the Bombay High Court, in consultation with actuary K.A.Pandit, the scheme was modified

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and the Writ Petition was withdrawn, while so, financial viability of the scheme cannot be challenged. More so, when ONGC has agreed to make direct contribution for mitigation of the deficit PRBS from out of distributable profits, challenge to the financial viability of the scheme is unsustainable.

37. Implementation of PRBS as an additional financial scheme along with statutory EPS 1995 :-

Employees Pension Scheme 1995 came into force w.e.f. 16.11.1995. As per para 39, Central Government has the power to exempt any establishment from EPS 1995. Pointing out certain deficiency in PRBS and observing that pensionary benefits proposed by ONGC are inferior to those available under the EPS 1995, Central Government refused to grant exemption to ONGC from the operations of the provisions of the EPS 1995. After the direction of the Supreme Court in W.P.No.490/1999 and batch matters, when ONGC has again applied for exemption, the Central Government again refused to grant exemption.

38.The learned Counsel Mr.Nazirudeen has submitted that when statutory scheme has been implemented, statutory scheme alone should have prevalence and the self-contributory scheme cannot be implemented and it would amount to duplication of the scheme. In 1994 (I) LLJ 197 (SC) [Bakshish Singh v. Darshan Engg. Works], while dealing with the provisions of Payment of Gratuity Act, the Act was held to be a welfare measure introduced in the interest of General Public to secure social and economic justice to workmen to assist them in their old age and to ensure them a decent standard of life on their retirement. It was also observed therein that there was no provision in the Act for exempting any factory, shop etc. from the purview of the Act covered by it except where the employees are in receipt of gratuity or pensionary benefits which are no less favourable than the benefit conferred under the Act. The learned counsel invited specific reference to the following observations :-

> "The present Act is of the genre of Minimum Wages Act, the Payment of Bonus Act, the Provident Funds Act, Employees' State Insurance Act, and other like statutes. These statutes lay down the minimum relevant benefits which must be made available to the employees. We have solemnly resolved to constitute this country, among others, into a socialised republic and to secure to all its citizens, which, of course, include workmen, social and economic justice. Article 38 requires the State to strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which among other things, social and economic justice shall inform all the institutions of the national life. Article 39 states that the State shall, in particular, direct its policy towards securing, among others, that the citizens have the right to an adequate means to livelihood and that the health and strength of workers are not abused. Article 41 of the Constitution directs the State to make effective provision, among others, for securing public assistance in old age and in other cases of undeserved want. Article 42 enjoins the State to make provision for

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securing just and humane conditions of work while Article 43 requires the State to endeavour to secure by (sic) conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. Article 47 requires that the State shall regard the raising of the level of nuatuition and standard of living of its people and the improvement of public health as one of its (sic) primary duties."

39.The learned Counsel for the petitioners contended that when the Central Government has pointed out several deficiencies in the PRBS and Central Government refused to grant exemption on the ground that benefits under PRBS are inferior to those available under EPS 1995, the beneficial scheme as per Agreement between the parties cannot override the statutory provisions scheme. In support of his contention, the learned Counsel placed reliance upon 1977 LLJ 114 (Bombay) [Consolidated Crop Protection Pvt. Ltd., v. Hema Chandra Rao]. In the said case, challenge was to reduction of contribution of employer to statutory level, after cancellation of exemption under Employees Provident Fund Act. In the said case, learned Single Judge of the Bombay High Court has observed :

"20.If this is the correct meaning of S.12, can it be said that simply because the exemption earlier granted under S.17 read with sub-para (4) of para 27 of the scheme is cancelled, the total benefit which the employee was already getting under the voluntary scheme could be permitted to be reduced simply because the statutory scheme now became applicable ? In my view the only effect of cancelling or annulling the exemption is that the statutory scheme now became available in all respects except the old rates of contribution which are more beneficial. They must be continued whether it is the contribution of the employer or the employee. In other words, after the exemption is withdrawn and the employees of the establishment fell under the statutory scheme there is a possibility of higher contribution of the employees being reduced if the Commissioner agrees but not below the statutory minimum."

In the said case before Bombay High Court, the challenge was regarding rate of contribution of the employer and the employees, in the light of cancellation or annulling the exemption. We are of the view that the facts of the said case have no relevance to the present case.

40.Placing reliance upon AIR 1964 SC 1980 [Mohmedalli and ors. V. Union of India and anr.], the learned Counsel for the petitioners has submitted that after refusal of exemption, continuation of PRBS would amount to duplication of the scheme and when the whole scheme of EPS 1995 is intended for the benefit of the employees, pre-existing scheme cannot be continued. Observing that Sec.17 of the Employees Provident Fund Act do not confer uncontrolled and uncanalised power on the appropriate Government, the Supreme Court has observed as under :-

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"It would appear from the terms of the relevant portion of S.17 that the exemption to be granted by the appropriate Government is not in the nature of completely absolving the establishments from all liability to provide the facilities contemplated by the Act. The exemptions are to be granted by the appropriate Government only if in its opinion the exempted establishment has provisions made for provident fund, in terms at least equal to, if not more favourable to its employees. In other words, the exemption is with a view to avoiding duplication and permitting the employees concerned the benefit of the pre-existing scheme, which presumably has been working satisfactorily, so that the exemption is not meant to deprive the employees concerned of the benefit of a provident fund but to ensure to them the continuance of the benefit which at least is not in terms less favourable to them. As the whole scheme of provident fund is intended for the benefit of employees, S.17 only saves pre-existing schemes of provident fund pertaining to particular establishments. Hence the provisions of sub.sec(3) of S.1, read along with those of S.17, quoted above, cannot be said to have conferred uncontrolled and uncanalised power on the appropriate Government."

In our view, the above observation is more in the nature of obiter dictum. The above decision cannot be said to be an authority for the proposition that once the Central Government has refused exemption, the conclusion would be that the existing scheme is less favourable to the employees.

41.On the scope of granting exemption and the benefits available under EPS 1995, learned Counsel Mr.Nazirudeen has placed reliance upon 1999 IFJ 214 [National Ex-servicemen's Association & Anr. v. Union of India & Others]; 1996(1) LLJ Suppl. 176 [Bengal Ingot co. ltd., v.Regional Provident Fund Commissioner, West Bengal & Others]. We are of the view that those cases and the principle laid down in those cases have no application to the present case. Reliance was also placed upon 1997 (2) LLJ Bombay 38 [Gosalia Shipping Pvt. Ltd., Goa & Anr. v. Regional Provident Fund Commissioner, Goa & Anr.]. In the said decision, Bombay High Court has held that an Agreement or settlement between the parties could not have any bearing on the statutory demand due and payable under P.F. Act. It was further held that a settlement in respect of wages or basic wages would not in any way affect the jurisdiction of the authority under Section 7(a) of the P.F.Act. Since now PRBS is implemented as additional welfare scheme, the ratio of that decision is not relevant to the facts of this case.

42.It is not as if once the exemption under para 39 is denied, pre-existing scheme - PRBS automatically ceases to operate. In other words, refusal of exemption by Central Government does not automatically put an end to PRBS. Like in the Provident Funds Act, purpose of exemption under

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para 39 of EPS is only to ensure a better scheme. Notwithstanding the fact that exemption was not granted, we are of the view that PRBS can also be continued if the employees agree for continuation of the scheme.

43.After the Central Government has refused exemption on 16.04.2005, the issue was discussed with ASTO and other Unions on 18.05.2005, 01-02.07.2005. ONGC implemented EPS w.e.f. 16.11.1995. As noticed earlier, as per the report of M/s.Mercer Human Resources Consulting, PRBS scheme was modified as defined pension model. On 01.03.2007, CWC of ASTO also passed a resolution stating that the modified PRBS is substantial and compulsory as 'Defined Pension Model' and it was decided to continue with the scheme as additional welfare scheme. MOU was arrived at modifying PRBS as Defined Pension Model. Income Tax Commissioner had also allowed recognition under Rule 2(2) of Part B of IV Schedule of I.T. Act, 1961, observing that the proposed amendment to the existing PRBS rules are not in violation of IT Act 1961. Pursuant to the recognition by the Income Tax Department, contribution towards PRBS has become deductible under Section 80(c) of the Income Tax Act.

44.Mr.Nazirudeen, learned Counsel for the petitioner further urged that when Central Government has refused exemption under para 39, on the ground that PRBS is inferior or lesser than the benefits conferred under the Act, it is obligatory on ONGC to implement the statutory scheme. The main contention urged was that when exemption was refused on the ground that PRBS is less favourable, such a scheme cannot be implemented as additional benefit and statutory EPS would be more advantageous. The learned Counsel further urged that when ONGC has not obtained exemption, the Establishment cannot thrust upon its employees, any additional scheme and compulsorily deduct amount towards contribution. We have already dealt with this limb of contention. Normally, Court attaches importance and sanctity to the settlement arrived at between the employees and the establishment. As PRBS emanates from the collective settlement and MOU, petitioners cannot turn round and resile from the same.

45.re contention on Justness and Fairness of scheme :-

Much arguments were advanced attacking the scheme on the ground of lack of 'justness and fairness'. It was submitted that when the officers having long years of service are to contribute more, while those who are having less number of years would take away the benefits after their retirement within a couple of years of introduction of scheme and therefore, cannot be said to be just and fair for its continuation vis-a-vis the statutory scheme. We have gone through the rates of contribution applicable w.e.f. 01.04.2007 and also the earlier period. For the officers aged about 25 years to 50 years, the contribution varies from 2.00% to 11.00%. The apprehension of the petitioners that there is lack of fairness in the scheme since retired employees would take away the benefits within a few years of the scheme is unfounded. The question of justness and fairness of the scheme should be examined only with reference to the situation and keeping in view the interest of all concerned. The terms of

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MOU and the scheme cannot be examined in bits and pieces, nor can it be weighed in golden scales, as urged by the petitioners.

46.As noticed earlier, as per the terms of Agreement dated 28.05.2007, it was agreed that PRBS could be sustained as a Defined Pension Scheme. The following terms of Agreement would show that the modified scheme would ensure benefit to all the beneficiaries as per Defined Pension Scheme :-

> "1.PRBS Benefits will be extended in terms of MOUs dated 03.02.1998 and 19.07.1998 as "Defined Pension Scheme". To this effect, the current Annuity Factor of 92.379 would be made dynamic to assure monthly pension restricted to a maximum of 50% of "Last drawn Notional Salary" to all the members.
>
> 2.Direct cash contribution of the employees will be doubled from the present rates w.e.f. first day of the month of implementation.
>
> 3.Additional contribution received from ONGC shall be increased by 82% w.e.f. First day of the month of implementation with annual escalation of 10% and the same shall be wholly contributed by the employee to the PRBS Trust.
>
> 4.In addition, ONGC shall deposit some amount from the remaining part of the distributable profit of the past and not more than 40% of the distributable profit every year after payment of Additional annual incentive prospectively to the "Fund" as per the requirement of the Fund's liability from time to time directly to PRBS Trust.
>
> 5.ONGC will contribute to PRBS taking into account various tax laws so as to get maximum tax advantage".

It is in the context of above terms, PRBS was made compulsorily applicable to all employees w.e.f. 16.11.1995.

47.As per the modified scheme, inter-alia the following benefits would be available to the members of PRBS :

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Rule	Existing Rule	Modified Rule
18.5	Benefits under this scheme will be paid by purchasing annuity from LIC at the time of superannuation or leaving the organization as per Rule 18.4 above. This will be calculated on the basis of LIC annuity for life pension with guaranteed payment for 15 years. The member concerned shall have the option to choose from various types of annuities available with LIC.	Benefits under this scheme will be paid by purchasing annuity from LIC or any other insurer as defined in clause (28BB) of section 2 of the Income Tax Act, 1961, at the time of superannuation or leaving the organization as per Rule 18.4 above. This will be calculated on the basis of annuity for life pension with guaranteed payment for 15 years. The member concerned shall have the option to choose from various types of annuities available with LIC or any other insurer as defined in Clause (28BB) of Section 2 of the I.T. Act, 1961 from whom the annuity purchased.
18.6	Members may have the option to commute one-third of the pensionary benefit as per LIC annuity for life pension with guaranteed payment for 15 years	Members have the option to commute one-third of the pensionary benefit as per annuity for lie pension with guaranteed payment for 15 years of LIC or any other insurer as defined in Clause (28BB) of Section 2 of the Income Tax Act, 1961 from whom annuity is purchased.
28	ONGC shall make a token contribution of Rs.100/- per annum	ONGC shall make a token contribution of Rs.100/- per annum, provided that ONGC may make such further contribution at its complete discretion, as it may deem fit, whether periodically or otherwise.

48.The learned Senior Counsel Mr.Masilamani has submitted that PRBS Trust has so far settled 17,107 claims of its members and paid up to 31.07.2007, a sum of Rs.128.16 crores. As per approval of the PRBS scheme by Commissioner of Income Tax, individual members have also availed deductions from income tax in respect of contributions paid to PRBS. We have also perused Form No.16 of the employee Ganga, who is also one of the petitioner, as per which, her contribution to PRBS is shown as deduction under Chapter VI-A under Section 80(c) Income Tax Act. By analysis of the rate of contribution, benefits available and that the contribution is deductible under Section 80(c), we are prima facie convinced that PRBS is beneficial to the employees.

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49.Arguments were advanced challenging the method of calculation of payment of benefits under PRBS scheme and it was urged that the scheme is in doldrums and cannot be made viable. It was mainly argued that persons with less years of service for retirement are benefited more, by taking away benefits in the initial stages of the scheme and the scheme cannot be made viable in future so as to benefit other employees who are contributing to the scheme. This contention hardly merits acceptance.

50.ONGC and other establishments have challenged the refusal on grant of exemption by Central Government and the validity of EPS 1995 is reiterated in the decision AIR 2004 SC 3264 [OITS Elevator Employees Union v. Union of India and ors]. In the said decision, upholding the validity of EPS 1995, the Supreme Court has observed, "The Act is a social welfare legislation to provide for the institution of Provident Fund, Pension Fund and Deposit Linked Insurance Fund for employees in factories and other establishments". The Supreme Court has referred to the decision in AIR 1994 SC 2271 [Mafatlal Group Staff Association & Ors. v. Regional Commissioner Provident Fund & Ors.], in which it was stated as follows :-

> "The rates are so designed as to ensure that the employee gets back the amount of his own contribution with certain additional amount of interest. The amount of contribution by the employer and the Central Government and interest of employees' contribution is retained and utilized to provide payment of other two benefits, namely, monthly family pension fund and life assurance benefit, to the widows or minor sons or unmarried daughters of those unfortunate members who die prematurely during employment. Thus the entire amount of contributions to the family pension fund is utilized for giving benefits to the member of the fund himself or to his destitute surviving family members in case of his death in one of the aforesaid four ways and no part of it is utilized for any other purpose. .... While it is not possible for us to embark upon an enquiry into the correctness or otherwise of the rival statements and particulars furnished by the parties, the fact remains – which we should emphasise – that there should be a broad correspondence between what the employees contribute and what they get in return. ... The scheme is one conceived in their interest and for their benefit and it should prove so in practice. It is the statutory duty of the respondents to ensure that both the contributions by employees and the benefits flowing to them must be broadly commensurate. Since actuarial appraisal is done every three years, as provided by the statutory scheme itself, we are sure that the observations made herein will be kept in mind and necessary adjustments made".

51.Under PRBS, the rate of contribution for employees who are having long service is less. For aged employees, percentage of contribution is higher, perhaps to strike a balance. The question whether employees who retire in near future would be more benefited, depriving the employees with long years of service, involves complicated questions of facts and

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assessment of evidence. Such complex questions of facts and analysis of evidence cannot be gone into under Art.226 of Constitution of India. Though we have expressed our opinion that the scheme is prima facie beneficial to the employees, what would be the future of the scheme and whether employees with less years of service will be more benefitted than the employees with long years of service, require an in-depth analysis of the scheme, which exercise is not permissible, exercising jurisdiction under Art.226 of Constitution of India.

52.Management of the scheme by Board of Trustees :-

PRBS is administered by Board of Trustees as per the Trust Deed dated 23.10.1991. The Board of Trustees shall consist of seven members – four of them shall be nominated by the Chairman, ONGC and the remaining three Trustees shall be nominated by CWW of ASTO. As per Para 10 of the Trust Deed, the Trustees may at any time, by a resolution, add, alter, vary, revoke or amend any provision of the Rules, provided such alteration, variation, revocation are not inconsistent with the main objects of the Trust. Onbehalf of the petitioners, it was urged that when there is no proper guideline, there is possibility of mismanagement and there is no mechanism for supervision. It was submitted that huge amount is being collected as contribution towards PRBS when Trustees are given uncanalised power, exercising plenary jurisdiction, the Court is to issue direction forbearing ONGC from deducting salary and diverting it to the Trust.

53.Mr.Nazirudeen, learned Counsel for the petitioners contended that PRBS Trust being a Public Trust has public duties to perform and therefore, writ is maintainable against PRBS Trust and the High Court can certainly pass appropriate orders as against the public trust. In support of his contention, learned Counsel placed reliance upon AIR 1989 SC 1607 [Shri Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanthi Mahotsav Smarak Trust and others v. V.R.Rudani and others], wherein the Hon'ble Supreme Court has held that mandamus is a very wide remedy, which must be easily available to reach injustice wherever it is found and if a positive obligation exists, mandamus cannot be denied. In the said case, appellant no.1 was a public trust and other appellants were its Trustees. Trust was running a Science College At Ahmedabad, which was affiliated to Gujarat University. When the University took decision to grant revised scale of pay to teachers in affiliated college, the Trust has not implemented the same and in the dispute between the Management and the Teachers, Vice Chancellor has passed the award. At that stage, appellant No.1, Trust, took an extreme decision of closing down the college, resulting in termination of services of all the teachers and academic staff. In the Writ Petition filed by the Teachers and the academic staff, having regard to the decision taken by the Trust, Supreme Court has held that a Mandamus can be issued against a person or body to carry out the duties placed on them by statutes, even though they are not public officials or statutory body and mandamus is a very wide remedy, which must be easily available. The ratio of the said decision cannot be applied to the present case, since the facts are entirely different. Deduction from salary is made for contribution towards PRBS only in view of the

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settlement between the Management and ASTO, and pursuant to the authorization letters given be the employees.

54.Placing reliance upon AIR 1981 SC 212 [Som Prakash Rekhi v. Union of India and another], learned Counsel for the petitioner contended that any deduction from the salary is unjustified. In the said case, petitioner retired voluntarily under an extant Voluntary Retirement Scheme. The quantum of pension was regulated by that scheme. Being a contributory member of pension of Burmah Shell under the Trust Deed set up by it, the petitioner earned his pension and for payment of Gratuity and Provident Fund, deductions were made. Under such circumstances, the Supreme Court has held that Sec.12 of Provident Fund Act and Sec.14 of Gratuity Act have an overriding effect and reduction in retiral benefits on account of Provident Fund and Gratuity derived by the employee is to be frowned upon. Regulations 16 of Trust Deed provided for certain authorized deductions from the amount of pension of non-contributory members. In such facts and circumstances of the case, the Supreme Court has held that deductions were unauthorized deductions. The case on hand is clearly distinguishable on facts.

55.Much arguments were advanced on the management of trust. We have carefully gone through the Trust Deed. PRBS Trust is governed by Trust Act and laws of India. Any question relating to management and administration of Trust and how best the scheme could be administered, are questions of fact which calls for an in-depth analysis of working of the scheme and assessment of evidence. Exercising jurisdiction under Article 226 of the Constitution of India, it is not enjoined upon this Court to delve deep upon those factual aspects and examine whether the scheme is administered in accordance with the provisions of the Trust Act.

56.As per para 14 of the Trust Deed, "a deed of any variation thereto shall be governed by the laws of India". The Trust and its administration is governed by the Trust Act. If the petitioners have any genuine grievances about the functioning of Trust, it could be brought to the notice of the Chairman of ONGC since Chairman of ONGC is empowered to issue any appropriate direction. Whether the existing scheme is properly functioning and properly managed; whether accounts are properly maintained; and whether the affairs of the trust are managed properly, are complex questions of fact, which cannot be gone into, exercising jurisdiction under Article 226 of the Constitution of India. For the sake of completion, we may mention that the suit filed by some of the employees before the Civil Court in Rajahmundry, Andhra Pradesh, seeking Permanent Injunction restraining ONGC from deducting the salary was dismissed. That apart, petitioners being members of ASTO are to raise their objections if any, within the union. The Court cannot be called upon to adjudicate whether a scheme is properly managed and administered by the Trust.

57.Before we conclude, we feel it appropriate to highlight two points. On 01.03.2007, in the meeting at New Delhi, various issues – as many as 21 issues/demands, came up for discussion between ONGC Management

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and CWC of ASTO. PRBS figured as Item No.8 for discussion. When the petitioners have agreed and accepted the other benefits as outcome of the discussion, it is not fair on the part of the petitioners simultaneously to accept the benefit and raise objections to PRBS. Inasmuch as the petitioners having availed the benefits of some of the items, they cannot simultaneously reprobate the outcome of the meeting in so far as PRBS is concerned. In our view, it is not fair on the part of the petitioners to resile from MOU and assail PRBS on the ground of want of "justness and fairness".

58.Yet another factor may be highlighted. As noticed earlier, many of the petitioners had given authorization letter to remit the amount to Executive Officer, PRBS i.e. the difference between cost of Uniform including stitching charges, expenditure on washing, expenditure on refreshment, canteen facility and to pay the same as additional contribution towards PRBS. They have also availed income tax deduction under Sec.80(c) for the contribution towards PRBS. While the petitioners have availed the benefits of tax deductions etc., it is not open to the petitioners to argue on the viability of justness and fairness of the scheme. In our view, feeble criticism advanced on the viability of the scheme cannot be countenanced.

59.We, therefore, do not find any merit in any of these Writ Petitions and all the Writ Petitions are dismissed. W.A.Nos.2771 and 2772 of 2004 are allowed. Connected W.A.M.Ps., and W.P.M.Ps. are closed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

tar

To

1. The Secretary,
Ministry of Petroleum and Natural Gas,
New Delhi.

2.The Chairman and Managing Director,
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3. The Regional Director,
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4. The Executive Officer,
Post Retirement Benefit Scheme Trust,
ONGC, PRBS Section, Tel Bhavan,
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5. The Secretary,
Ministry of Labour,
Government of India,
New Delhi.

+ 2 ccs to Mr.P.Rathinadurai Advocate SR.NO.59970
+ 6 ccs to Mr.R.Tholgappian Advocate SR.NO.60314 to 60319
+ 3 ccs to Mr.S.Balamurgan Advocate SR.NO.60321 to 60323
+ 1 cc to Mr.H.Nazirudeen Advocate SR.NO.60320
+ 1 cc to Mr.V.Vibhishanan Advocate SR.NO.60208

VRK, VC(COs)
KK, KM, DCP, SR, RD, RVL 26.10.2007.

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